

**PUBLIC REPORT OF EXAMINATION OF THE CLAIMS
PRACTICES OF THE
CALIFORNIA CAPITAL INSURANCE COMPANY
NAIC # 13544 CDI # 0233-7**

**EAGLE WEST INSURANCE COMPANY
NAIC # 12890 CDI # 1645-1**

**MONTEREY INSURANCE COMPANY
NAIC # 23540 CDI # 3169-0**

AS OF MAY 1, 2001

STATE OF CALIFORNIA



**DEPARTMENT OF INSURANCE
FIELD CLAIMS BUREAU**

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CALIFORNIA DEPARTMENT OF INSURANCE

Consumer Services and Market Conduct Branch
Field Claims Bureau, 11th Floor
Ronald Reagan State Office Building
300 South Spring Street
Los Angeles, CA 90013



September 3, 2002

The Honorable Harry W. Low
Insurance Commissioner
State of California
45 Fremont Street
San Francisco, California 94105

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claims practices and procedures in California of:

California Capital Insurance Company

NAIC #13544

Eagle West Insurance Company

NAIC #12890

Monterey Insurance Company

NAIC #23540

Hereinafter referred to as the Company, collectively as the Companies or California Capital, Eagle West, and Monterey.

This report is made available for public inspection and is published on the California Department of Insurance web site (www.insurance.ca.gov) pursuant to California Insurance Code section 12938.

SCOPE OF THE EXAMINATION

The examination covered the claims handling practices of the aforementioned Companies during the period April 30, 2000 through May 1, 2001. The examination was made to discover, in general, if these and other operating procedures of the Companies conform with the contractual obligations in the policy forms, to provisions of the California Insurance Code (CIC), the California Code of Regulations (CCR), the California Vehicle Code (CVC) and case law. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al.

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by the Companies for use in California including any documentation maintained by the Companies in support of positions or interpretations of fair claims settlement practices.
2. A review of the application of such guidelines, procedures, and forms, by means of an examination of claims files and related records.
3. A review of consumer complaints received by the California Department of Insurance (CDI) in the most recent year prior to the start of the examination.

The examination was conducted at the Companies' Monterey, California claims office.

The report is written in a "report by exception" format. The report does not present a comprehensive overview of the subject insurer's practices. The report contains only a summary of pertinent information about the lines of business examined and details of the non-compliant or problematic activities or results that were discovered during the course of the examination along with the insurer's proposals for correcting the deficiencies. When a violation is discovered that results in an underpayment to the claimant, the insurer corrects the underpayment and the additional amount paid is identified as a recovery in this report. All unacceptable or non-compliant activities may not have been discovered, however, and failure to identify, comment on or criticize activities does not constitute acceptance of such activities.

Any alleged violations identified in this report and any criticisms of practices have not undergone a formal administrative or judicial process.

CLAIM SAMPLE REVIEWED AND OVERVIEW OF FINDINGS

The examiners reviewed files drawn from the category of Closed Claims for the period April 30, 2000 through May 1, 2001, commonly referred to as the “review period”. The examiners reviewed 272 California Capital Insurance Company Homeowners (HO), Dwelling Fire, and Personal Automobile (PA) claim files; 101 Eagle West Insurance Company Homeowners, Dwelling Fire and Personal Automobile claim files; and 48 Monterey Insurance Company Commercial Automobile (CA), Business Owners Policy and Commercial Multi-Peril claim files. The examiners cited 51 claims handling violations of the Fair Claims Settlement Practices Regulations and/or California Insurance Code Section 790.03 within the scope of this report.

California Capital Insurance Company			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
Homeowners	3,830	54	5
HO Bodily Injury	109	35	8
HO Dwelling Fire Property Damage	654	56	8
HO Dwelling Fire Bodily Injury	4	4	1
PA Comprehensive	1,535	65	13
PA Collision	2,886	58	7
TOTALS	9,018	272	42

Eagle West Insurance Company			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
Homeowners	471	21	0
HO Dwelling Fire Property Damage	39	6	0
PA Comprehensive	173	27	1
PA Collision	329	47	2
TOTALS	1,012	101	3

Monterey Insurance Company			
CATEGORY	CLAIMS FOR REVIEW PERIOD	REVIEWED	CITATIONS
CA Comprehensive	10	10	2
CA Collision	15	15	1
Business Owners Policy	9	6	0
Commercial Multi Peril	24	17	3
TOTALS	58	48	6

TABLE OF TOTAL CITATIONS				
Citation	Description	California Capital	Eagle West	Monterey
CCR §2695.8(b)(1)	The Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile or the Company failed to include, in the settlement, all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the comparable automobile.	8	2	1
CCR §2695.7(g)	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	4	0	1
CCR §2695.3(a)	The Company's claim file failed to contain all documents, notes, and work papers which pertain to the claim.	5	0	0
CCR §2695.7(h)	Upon acceptance of the claim the Company failed to tender payment within thirty calendar days.	4	0	1
CCR §2695.7(b)(1)	The Company failed to provide written basis for the denial of the claim.	2	0	2
CCR §2695.4(a)	The Company failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy.	3	0	0
CCR §2965.7(c)(1)	The Company failed to provide written notice of the need for additional time every thirty calendar days.	2	1	0
CCR §2695.7(b)	The Company failed, upon receiving proof of claim, to accept or deny the claim within forty calendar days.	2	0	0
CCR §2695.5(d)	The Company's claims agent failed to immediately transmit notice of claim to the insurer.	2	0	0
CCR §2695.5(e)(1)	The Company failed to acknowledge notice of claim within fifteen calendar days.	2	0	0
CCR §2695.5(e)(3)	The Company failed to begin investigation of the claim within fifteen calendar days.	2	0	0
CCR §2695.3(b)(2)	The Company failed to record in the file the date the Company received, date(s) the Company processed and date the Company transmitted or mailed every relevant document in the file.	0	0	1
CCR §2695.5(b)	The Company failed to respond to communications within fifteen calendar days.	1	0	0

Citation	Description	California Capital	Eagle West	Monterey
CCR §2695.7(b)(3)	The Company failed to include a statement in their claim denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance.	1	0	0
CCR §2695.7(f)	The Company failed to provide written notice of any statute of limitation or other time period requirement not less than sixty days prior to the expiration date.	1	0	0
CCR §2695.5(e)(2)	The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days.	1	0	0
CCR §2695.8(i)	The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation.	1	0	0
CCR §2695.8(f)	The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based.	1	0	0
Total Citations		42	3	6

SUMMARY OF CRITICISMS, INSURER COMPLIANCE ACTIONS AND TOTAL RECOVERIES

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations alleged in this report. This report contains only alleged violations of Section 790.03 and Title 10, California Code of Regulations, Section 2695 et al. In response to each criticism, the Company is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. Regardless of the remedial actions taken or proposed by the Company, it is the Company's obligation to ensure that compliance is achieved. The total money recovered was \$2,936.87 within the scope of this report.

1. The Company failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile or the Company failed to include, in the settlement, all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the comparable automobile. In 11 instances, the Companies either failed to explain in writing for the claimant the basis of the fully itemized cost of the comparable automobile or failed to include in the settlement, all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the comparable automobile. The Department alleges these acts are in violation of CCR §2695.8(b)(1).

Summary of Company Response: The Companies acknowledge that in nine instances, the files lacked the necessary evidence to show a total loss automobile valuation was provided to the claimant. As a result of this examination, the Companies have implemented a training plan and have conducted meetings with the handling adjusters.

Eagle West acknowledges that the fees were improperly paid in one file and as a result of this examination paid the amount owed. The Companies will follow up with file reviews in order to assure compliance with the California regulations.

The Companies disagree with the examiner's criticism that they should pay the \$3.00 Department of Motor Vehicles' processing fee to the claimant when the claimant retains salvage.

This is an unresolved issue and may result in further administrative action.

2. The Company attempted to settle a claim by making a settlement offer that was unreasonably low. In five instances, the Companies attempted to settle a claim by making a settlement offer that was unreasonably low. In one property settlement, depreciation was taken on the labor to remove wet carpet. In another settlement, payment involved a miscalculation of the correct dollar amount and in another involved a deduction that was not substantiated. One underpayment involved a recently purchased vehicle that the Company appraised at an amount greater than the insured had paid. The payment was based on the lower purchase price rather than the more recent appraisal. The fifth case involved what should have

been an increase in a total loss settlement amount due to a mileage adjustment for low mileage, which was noted by the appraisal service. The Department alleges these acts are in violation of CCR §2695.7(g).

Summary of Company Response: The Companies acknowledge that in these cases the amounts paid were too low and they have subsequently paid \$2,889.87. The Companies state that each of these mathematical errors was not a custom and practice. As a result of this examination, the Companies have implemented overall training as well as spoken specifically to the adjusters involved regarding these errors. The Companies will follow up with file reviews in order to assure compliance with the California regulations.

3. The Company failed to properly document claim files. In five instances, California Capital claim files failed to contain all documents, notes and work papers. The Department alleges these acts are in violation of CCR §2695.3(a).

Summary of Company Response: The Company acknowledges that the files did not contain sufficient documentation to determine how the claims were settled. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

4. Upon acceptance of the claim the Company failed to tender payment within thirty calendar days. In five instances, the Companies, upon acceptance of the claim, failed to tender payment within thirty calendar days. The Department alleges these acts are in violation of CCR §2695.7(h).

Summary of Company Response: The Companies acknowledge that in these cases the payments were not tendered immediately or even within the 30 days allowed by the regulations. As a result of this examination, the Companies have implemented a training plan and have conducted meetings with the handling adjusters. The Companies will follow up with file reviews in order to assure compliance with the California regulations.

5. The Company failed to provide written basis for the denial of the claim. In four instances, the Companies failed to provide a written basis for the denial of the claim. The Department alleges these acts are in violation of CCR §2695.7(b)(1).

Summary of Company Response: The Companies acknowledge that the files in question did not meet the standard of the regulations. In one case, the Company requested the file be returned when the examiners were finished reviewing it so it could be used as a training tool. As a result of this examination, the Companies have implemented a training plan and have conducted meetings with the handling adjusters. The Companies will follow up with file reviews in order to assure compliance with the California regulations.

6. The Company failed to disclose all policy provisions. In three instances, California Capital failed to disclose all benefits, coverage, time limits or other provisions of the insurance policy. The Department alleges these acts are in violation of CCR §2695.4(a).

Summary of Company Response: The Company acknowledges the errors in these files. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

7. The Company failed to provide written notice of the need for additional time every thirty-calendar days. In three instances, the Companies failed to provide written notice of the need for additional time every thirty-calendar days. The Department alleges these acts are in violation of CCR §2695.7(c)(1).

Summary of Company Response: The Companies acknowledge that a status was not sent on these claims. As a result of this examination, the Companies have implemented a training plan and have conducted meetings with the handling adjusters. The Companies will follow up with file reviews in order to assure compliance with the California regulations.

8. The Company failed to provide a written basis for the denial of the claim. In two instances, California Capital failed to provide written basis for the denial of the claim. The Department alleges these acts are in violation of CCR §2695.7(b).

Summary of Company Response: In one instance, the Company acknowledges that it failed to provide the written basis for the denial of the claim. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

In the other instance, the Company disputes the date that the proof of claim was received. The Company disagrees with the examiner's criticism.

This is an unresolved issue and may result in further administrative action.

9. The Company's claims agent failed to immediately transmit notice of claim to the insurer. In two instances, California Capital claims agents failed to immediately transmit notice of claim to the insurer. The Department alleges these acts are in violation of CCR §2695.5(d).

Summary of Company Response: The Company acknowledges that these two files did not meet the standards of the regulations. In January of 2001, California Capital began implementation of an 800-number direct claim reporting

service. The implementation will be complete by the end of the 2001 calendar year. The Company anticipates that this new system will eliminate the occurrence of this type of violation.

10. The Company failed to acknowledge notice of claim within fifteen calendar days. In two instances, California Capital failed to acknowledge notice of claim within fifteen calendar days. The Department alleges these acts are in violation of CCR §2695.5(e)(1).

Summary of Company Response: The Company acknowledges the requirement to acknowledge notice of claims within 15 days. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

11. The Company failed to begin investigation of the claim within fifteen calendar days. In two instances, California Capital failed to begin investigation of the claim within fifteen calendar days. The Department alleges these acts are in violation of CCR §2695.5(e)(3).

Summary of Company Response: The Company acknowledges the requirement to begin necessary investigations within 15 days. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

12. The Company failed to record claim data in the file. In one instance, Monterey failed to record the date the Company received, date(s) the Company processed and date the Company transmitted or mailed every relevant document in the file. The Department alleges this act is in violation of CCR §2695.3(b)(2).

Summary of Company Response: The Company acknowledges the requirement that receipt of all mail be documented. Although this file was an exception in that it was hand delivered, the manager and adjuster have been instructed to date stamp all newly received documents.

13. The Company failed to respond to communications within fifteen calendar days. In one instance, California Capital failed to respond to communications within fifteen calendar days. The Department alleges this act is in violation of CCR §2695.5(b).

Summary of Company Response: The Company acknowledges the error in this case. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. California Capital will follow up with file reviews in order to assure compliance with the California regulations.

14. The Company failed to advise the claimant that he or she may have the claim denial reviewed by the California Department of Insurance. In one instance, California Capital failed to include a statement in their claim denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance. The Department alleges this act is in violation of CCR §2695.7(b)(3).

Summary of Company Response: The Company acknowledges the error in this file. As a result of this examination, California Capital has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

15. The Company failed to provide written notice of any statute of limitation sixty days prior to the expiration date. In one instance, California Capital failed to provide written notice of any statute of limitation or other time period requirement not less than sixty days prior to the expiration date. The Department alleges this act is in violation of CCR §2695.7(f).

Summary of Company Response: The Company acknowledges the error in this case and alleges it was an isolated incident. The Company utilizes a denial letter that contains the statute of limitations warning. As a result of this examination, California Capital has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

16. The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days. In one instance, California Capital failed to provide necessary forms, instructions, and reasonable assistance within fifteen calendar days. The Department alleges this act is in violation of CCR §2695.5(e)(2).

Summary of Company Response: The Company agrees the 15 days requirement was not met, but alleges that this was an isolated instance. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

17. The Company failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation. In one instance, California Capital failed to provide written notification to a first party claimant as to whether the insurer intends to pursue subrogation of the claim. The Department alleges this act is in violation of CCR §2695.8(i).

Summary of Company Response: The Company acknowledges that it did not send the required letter in this case, but that this was an isolated instance. The Company has provided form letters that were supposed to have been used. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.

18. The Company failed to supply the claimant with a copy of the estimate upon which the settlement is based. In one instance, California Capital failed to supply the claimant with a copy of the estimate upon which the settlement is based. The Department alleges this act is in violation of CCR §2695.8(f).

Summary of Company Response: The Company acknowledges that the file did not meet the standard of the regulation. As a result of this examination, the Company has implemented a training plan and has conducted meetings with the handling adjusters. The Company will follow up with file reviews in order to assure compliance with the California regulations.